

APPENDIX A

FORM OF CONTRACT - PRE-CONSTRUCTION SERVICES

**CONSTRUCTION MANAGER AT RISK  
PRE-CONSTRUCTION SERVICES AGREEMENT**

State Construction File Number:

THIS AGREEMENT, made **thi**s day of \_ \_\_\_\_ in the year of \_ \_\_

for \_\_\_\_\_  
(Title of Project)

by and between \_\_\_\_\_

\_\_\_\_\_ hereinafter called the Construction Manager at Risk, and the State of North Carolina, through

\_\_\_\_\_ hereinafter called the Owner.

**WITNESS ETH:**

Whereas the Owner has published a Request for Proposals seeking the submission of competitive proposals to act as a Construction Manager at Risk to furnish professional construction management services during the design and construction of the Project identified and described in that Request for Proposals; and,

Whereas, the undersigned Construction Manager at Risk submitted a competitive proposal that was evaluated by the Owner; and,

Whereas, the Owner, through its awarding authority, has made an award for the Pre-Construction Services related to the Project work to the undersigned Construction Manager at Risk, and pursuant to the terms of the Request for Proposals this form is to be executed to foml and memorialize the contractual relationship between the parties;

Now therefore, the Construction Manager at Risk and the Owner agree as follows:

1. This fo1111 of pre-construction services contract hereby shall be incorporated and accompanied by; Owner's letter for recommendation of award dated \_\_\_\_\_ Owner's request for proposal dated \_\_\_\_\_, and the Construction Manager at Risk's response to the proposal dated \_\_\_\_\_
2. The Pre-Construction Services provided by the Construction Manager at Risk shall be in accordance with Section II, Paragraph G of the incorporated Owner's request for proposal.

3. The Owner will compensate the Construction Manager at Risk for pre-construction services in the amount of \_\_\_\_\_ payable in accordance with Section II, Paragraph F of the incorporated Owner's request for proposal.
  
4. The Owner may terminate this agreement for any reason upon ten (10) calendar days written notice (delivered by certified mail, return receipt requested). This agreement may be terminated by either party upon seven (7) calendar days written notice (delivered by certified mail, return receipt requested) should one party fail to perform in accordance with its terms through no fault of the other. In the event of termination, the Construction Manager at Risk shall receive payment for services rendered prior to receipt of the written termination notice. Any work done by the Construction Manager at Risk prior to termination shall become the property of the Owner. Termination for non-acceptance of the Construction Manager at Risk's proposed Guaranteed Maximum Price shall be stipulated in Section II, Paragraph G.10 of the incorporated Owner's request for proposal.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the day and date first above written in four (4) counterparts, each of which shall without proof or accounting for other counterparts, be deemed an original contract.

Witness: (Proprietorship or Partnership)

Construction Manager at Risk:

\_\_\_\_\_  
(Trade or Corporate Name)

By: \_\_\_\_\_

Attest: (Corporation)

Title: \_\_\_\_\_  
(Owner, Partner, or Corp. Pres. or Vice Pres. only)

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(Corporate Sec. or Asst. Sec. only)

(CORPORATE SEAL)

The State of North Carolina through

Witness:

\_\_\_\_\_  
(Agency, Department or Institution)

By: \_\_\_\_\_

Title: \_\_\_\_\_

APPEDIX B

FORM OF CONTRACT -PRELIMINARY GUARANTEED MAXIMUM PRICE

**FORM OF CONSTRUCTION MANAGER AT RISK CONTRACT  
PRELIMINARY GUARANTEED MAXIMUM PRICE**

State Construction File Number:

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_\_

for \_\_\_\_\_  
(Title of Project)

by and between \_\_\_\_\_

\_\_\_\_\_ hereafter call the Construction Manager at Risk, and the State of North Carolina, through

\_\_\_\_\_ hereinafter called the Owner.

**WITNESSETH**

Whereas the Owner has published a Request for Proposals seeking the submission of competitive proposals to act as a Construction Manager at Risk to furnish professional construction management services during the design and construction of the Project identified and described in that Request for Proposals; and,

Whereas, the undersigned Construction Manager at Risk submitted a competitive proposal that was evaluated by the Owner; and,

Whereas, the Owner, through its awarding authority, has made an award of the work to the undersigned Construction Manager at Risk, and pursuant to the terms of the Request for Proposals this form is to be executed to form and memorialize the contractual relationship between the parties; and

Whereas, the execution of this contract constitutes a Preliminary Guaranteed Maximum Price, established for the purpose of allowing the Construction Manager at Risk to proceed with the opening and acceptance of bids from first-tier subcontractors for construction work, awarding contracts for the work, and providing Construction Phase Services as set forth in Section II, Paragraph H of the incorporated Owner's Request for Proposal;

Now therefore, the Construction Manager at Risk and the Owner agree as follows:

1. This form of contract hereby shall be incorporated and accompanied by; Owner's letter for recommendation of award dated \_\_\_\_\_, Owner's Request for Proposal dated \_\_\_\_\_, Construction Manager at Risk's response to proposal dated \_\_\_\_\_, Construction Manager at Risk's HUB plan approved by Owner dated \_\_\_\_\_, Designer's drawing and specification lists dated \_\_\_\_\_, Construction Manager at \_\_\_\_\_

Risk's payment and performance bonds dated \_\_\_\_\_, Power of Attorney, Construction Manager at Risk's Insurance Certificate dated \_\_\_\_\_, Statement of PGMP including schedule of values for cost of the work and General Conditions dated \_\_\_\_\_, and incorporated herein by reference the contract for Pre-Construction Services dated \_\_\_\_\_

2. For the sums set forth in the Construction Manager at Risk's fee proposal (or any subsequently amended fee agreement), the Construction Manager at Risk undertakes to act as the Owner's fiduciary (N.C.G.S.143-128.1) and to furnish professional construction management services during the construction of the Project.
3. The providing of the Construction Manager at Risk services shall be in compliance with the requirements of the Request for Proposal (including all its appendices and attachments) and the Construction Manager at Risk's proposal (Hereinafter, together: the Contract Documents). To the extent that any term, requirement, or specification in the Construction Manager at Risk's proposal shall be in conflict with the Request for Proposal, the terms, requirements, and specifications of the Request for Proposal shall control and the conflicting contents of the Construction Manager at Risk's proposal shall be deemed surplusage except where provided otherwise.
4. Upon completion of the bidding of all subcontract work packages, the Cost of the Work shall become the sum total of all subcontract packages as proposed to be awarded to the lowest responsible, responsive bidders and shall be compared to the Cost of the Work set forth in paragraph 7 of this agreement. If the sum of all subcontract packages is less than the Cost of the Work set forth on paragraph 7, a reserve fund will be established in accordance with Section II, Paragraph H.2.1 of the Owner's Request for Proposal and the Preliminary Guaranteed Maximum Price will become the Final Guaranteed Maximum Price. If the sum of all subcontract packages is greater than the Cost of the Work set forth in paragraph 7, the Owner, Designer and Construction Manager at Risk will negotiate to reduce the Cost of the Work to the amount set forth in paragraph 7. The Owner reserves the option to make additional funds available to cover some or all of the difference between the sum of all subcontract packages and Cost of the Work set forth in paragraph 7. In the event that additional funds are added, a change order to this contract will be executed to establish the Fixed Guaranteed Maximum Price. No changes will be made to the Construction Manager at Risk Construction Management Fee or CM Contingency. Adjustments needed for bonds and insurance will be made as determined by the Cost of the Work.
5. That the Construction Manager at Risk shall commence provision of construction phase services under this agreement on a date to be specified in a written order of the Owner and shall fully complete all services hereunder and accomplish the final completion of the project within \_\_\_\_\_ consecutive calendar days from the date of Notice to Proceed. The Construction Manager at Risk shall furnish to the Owner various schedules as provided in the Contract Documents setting forth planned progress of the project broken down by the various divisions or part of the work and by calendar days. If the Construction Manager at Risk fails to begin the work under the contract within the time specified, or the progress of the work is not maintained on schedule, or the work is not completed within the time above specified, or shall allow the work to be performed unsuitably or shall discontinue the prosecution of the work, or if the Construction Manager at Risk shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him Dissatisfied

for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the work in an acceptable manner, the Owner may give notice in writing, sent by certified mail, return receipt requested, to the Construction Manager at Risk and his surety of such delay, neglect or default, specifying the same, and if the Construction Manager at Risk within a period of fifteen (15) days after such notice shall not proceed in accordance therewith, then the Owner shall, declare this contract in default, and, thereupon, the surety shall promptly take over the work and complete the performance of this contract in the manner and within the time frame specified. In the event the surety shall fail to take over the work to be done under this contract within fifteen (15) days after being so notified and notify the Owner in writing, sent by certified mail, return receipt requested, that he is taking the same over and stating that he will diligently pursue and complete the same, the Owner shall have full power and authority, without violating the contract, to take the prosecution of the work out of the hands of said Construction Manager at Risk, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of said contract according to the terms and provisions thereof or use such other methods as in his opinion shall be required for the completion of said contract in an acceptable manner. All costs and charges incurred by the Owner, together with the costs of completing the work under contract, shall be deducted from any monies due or which may become due said Construction Manager at Risk and surety. In case the expense so incurred by the Owner shall be less than the sum which would have been payable under the contract, if it had been completed by said Construction Manager at Risk, then the said Construction Manager at Risk and surety shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under the contract, then the Construction Manager at Risk and the surety shall be liable and shall pay to the Owner the amount of said excess.

6. It is further mutually agreed between the parties hereto that if at any time after the execution of this agreement and the surety bonds hereto attached for its faithful performance, the Owner shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bonds cease to be adequate to cover the performance of the work, the Construction Manager at Risk shall, at its expense, within five (5) days after the receipt of notice from the Owner so to do, furnish an additional bond or bonds in such form and amount, and with such surety or sureties as shall be satisfactory to the Owner. In such event no further payment to the Construction Manager at Risk shall be deemed to be due under this agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Owner.

7. Preliminary Guaranteed Maximum Price

Cost of the Work	\$
Construction Management Fee	\$
Construction Manager's Bonds and Insurance	\$
Construction Manager's Construction Contingency	\$ _____
<b>Total Preliminary Guaranteed Maximum Price</b>	<b>\$</b>

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the day and date first above written in four (4) counterparts, each of which shall without proof or accounting for other counterparts, be deemed an original contract.

Witness: (Proprietorship or Partnership)

Construction Manager at Risk:

\_\_\_\_\_

\_\_\_\_\_  
(Trade or Corporate Name)

By: \_\_\_\_\_

Attest: (Corporation)

Title: \_\_\_\_\_

(Owner, Partner, or Corp. Pres. or Vice Pres. only)

By: \_\_\_\_\_

Title: \_\_\_\_\_

(Corporate Sec. or Asst. Sec. only)

(CORPORATE SEAL)

The State of North Carolina through

Witness:

\_\_\_\_\_  
(Agency, Department or Institution)

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_



APPENDIX C

FORM OF CONTRACT - FIXED GUARANTEED MAXIMUM PRICE

**FORM OF CONSTRUCTION MANAGER AT RISK CONTRACT  
FIXED GUARANTEED MAXIMUM PRICE**

State Construction File Number:

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_\_

for \_\_\_\_\_  
(Title of Project)

by and between \_\_\_\_\_

\_\_\_\_\_ hereinafter called the Construction Manager at Risk, and the State of North Carolina, through

\_\_\_\_\_ hereinafter called the Owner.

**WITNESSETH:**

Whereas the Owner has published a Request for Proposals seeking the submission of competitive proposals to act as a Construction Manager at Risk to furnish professional construction management services during the design and construction of the Project identified and described in that Request for Proposals; and,

Whereas, the undersigned Construction Manager at Risk submitted a competitive proposal that was evaluated by the Owner; and,

Whereas, the Owner, through its awarding authority, has made an award of the work to the undersigned Construction Manager at Risk, and pursuant to the terms of the Request for Proposals this form is to be executed to form and memorialize the contractual relationship between the parties;

Now therefore, the Construction Manager at Risk and the Owner agree as follows:

1. This form of contract hereby shall be incorporated and accompanied by; Owner's letter for recommendation of award dated \_\_\_\_\_, Owner's Request for Proposal dated \_\_\_\_\_, Construction Manager at Risk's response to proposal dated \_\_\_\_\_, Construction Manager at Risk's HUB plan approved by Owner dated \_\_\_\_\_, Designer's drawing and specification lists dated \_\_\_\_\_, Construction Manager at Risk's payment and performance bonds dated \_\_\_\_\_, Power of Attorney, Construction Manager at Risk's Insurance Certificate dated \_\_\_\_\_, Statement of GMP including schedule of values for cost of the work and General Conditions dated \_\_\_\_\_

\_\_\_\_\_, and incorporated herein by reference the contract for Pre-Construction Services dated

2. For the sums set forth in the Construction Manager at Risk's fee proposal (or any subsequently amended fee agreement), the Construction Manager at Risk undertakes to act as the Owner's fiduciary (N.C.G.S.143-128.1) and to furnish professional construction management services during the construction of the Project.
3. The providing of the Construction Manager at Risk services shall be in compliance with the requirements of the Request for Proposal (including all its appendices and attachments) and the Construction Manager at Risk's proposal (Hereinafter, together: the Contract Documents). To the extent that any term, requirement, or specification in the Construction Manager at Risk's proposal shall be in conflict with the Request for Proposal, the terms, requirements, and specifications of the Request for Proposal shall control and the conflicting contents of the Construction Manager at Risk's proposal shall be deemed surplusage except where provided otherwise.
4. That the Construction Manager at Risk shall commence provision of construction phase services under this agreement on a date to be specified in a written order of the Owner and shall fully complete all services hereunder and accomplish the final completion of the project within \_\_\_\_\_ consecutive calendar days from the date of Notice to Proceed. The Construction Manager at Risk shall furnish to the Owner various schedules as provided in the Contract Documents setting forth planned progress of the project broken down by the various divisions or part of the work and by calendar days. If the Construction Manager at Risk fails to begin the work under the contract within the time specified, or the progress of the work is not maintained on schedule, or the work is not completed within the time above specified, or shall allow the work to be performed insuitably or shall discontinue the prosecution of the work, or if the Construction Manager at Risk shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the work in an acceptable manner, the Owner may give notice in writing, sent by certified mail, return receipt requested, to the Construction Manager at Risk and his surety of such delay, neglect or default, specifying the same, and if the Construction Manager at Risk within a period of fifteen (15) days after such notice shall not proceed in accordance therewith, then the Owner shall, declare this contract in default, and, thereupon, the surety shall promptly take over the work and complete the performance of this contract in the manner and within the time frame specified. In the event the surety shall fail to take over the work to be done under this contract within fifteen (15) days after being so notified and notify the Owner in writing, sent by certified mail, return receipt requested, that he is taking the same over and stating that he will diligently pursue and complete the same, the Owner shall have full power and authority, without violating the contract, to take the prosecution of the work out of the hands of said Construction Manager at Risk, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of said contract according to the terms and provisions thereof or use such other methods as in his opinion shall be required for the completion of said contract in an acceptable manner. All costs and charges incurred by the Owner, together with the costs of completing the work under contract, shall be deducted from any monies due or which may become due said Construction Manager at Risk and surety. In case the expense so

incurred by the Owner shall be less than the sum which would have been payable under the contract, if it had been completed by said Construction Manager at Risk, then the said Construction Manager at Risk and surety shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under the contract, then the Construction Manager at Risk and the surety shall be liable and shall pay to the Owner the amount of said excess.

5. It is further mutually agreed between the parties hereto that if at any time after the execution of this agreement and the surety bonds hereto attached for its faithful performance, the Owner shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bonds cease to be adequate to cover the performance of the work, the Construction Manager at Risk shall, at its expense, within five (5) days after the receipt of notice from the Owner so to do, furnish one additional bond or bonds in such form and amount, and with such surety or sureties as shall be satisfactory to the Owner. In such event no further payment to the Construction Manager at Risk shall be deemed to be due under this agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Owner.

6. Fixed Guaranteed Maximum Price

Cost of the Work	\$
Construction Management Fee	\$
Construction Manager's Bonds and Insurance	\$
Construction Manager's Construction Contingency	\$ _____
<b>Total Fixed Guaranteed Maximum Price</b>	<b>\$</b>

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the day and date first above written in four (4) counterparts, each of which shall without proof or accounting for other counterparts, be deemed an original contract.

Witness: (Proprietorship or Partnership)

Construction Manager at Risk:

\_\_\_\_\_

\_\_\_\_\_  
(Trade or Corporate Name)

By: \_\_\_\_\_

Attest: (Corporation)

Title: \_\_\_\_\_  
(Owner, Partner, or Corp. Pres. or Vice Pres. only)

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(Corporate Sec. or Asst. Sec. only)

(CORPORATE SEAL)

The State of North Carolina through

Witness:

\_\_\_\_\_  
(Agency, Department or Institution)

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

APPENDIX D

PERFORMANCE AND PAYMENT BOND FORMS

**FORM OF PERFORMANCE BOND**

Date of Contract: \_\_\_\_\_

Date of Execution: \_\_\_\_\_  
Name of Principal  
(Contractor) \_\_\_\_\_

Name of Surety : \_\_\_\_\_

Name of Contracting  
Body : \_\_\_\_\_

Amount of Bond : \_\_\_\_\_

Project \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind, ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body, identified as shown above and hereto attached:

NOW, THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the contracting body, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in \_\_\_\_\_ counterparts .

Witness:

\_\_\_\_\_  
Contractor: (Trade or Corporate Name)

\_\_\_\_\_  
(Proprietorship or Partnership)

By: \_\_\_\_\_

Attest: (Corporation)

Title : \_\_\_\_\_  
(Owner, Partner, or Corp.  
Pres. or Vice Pres. only)

By: \_\_\_\_\_

Title : \_\_\_\_\_  
(Corp. Sec. or Asst. Sec.. only)

(Corporate Seal)

\_\_\_\_\_  
(Surety Company)

Witness:

By: \_\_\_\_\_

\_\_\_\_\_

Title : \_\_\_\_\_  
(Attorney in Fact)

Countersigned :

(Surety Corporate Seal)

\_\_\_\_\_

\_\_\_\_\_  
(N.C. Licensed Resident Agent)

\_\_\_\_\_

\_\_\_\_\_  
Name and Address-Surety Agency

\_\_\_\_\_

\_\_\_\_\_  
Surety Company Name and N.C.  
Regional or Branch Office Address



**FORM OF PAYMENT BOND**

Date of Contract: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Name of Principal  
(Contractor) \_\_\_\_\_

Name of Surety : \_\_\_\_\_

Name of Contracting  
Body: \_\_\_\_\_

Amount of Bond : \_\_\_\_\_

Project \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body identified as shown above and heretoattached:

NOW, THEREFORE, if the principal shall promptly make payment to all persons supplying labor/material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in \_\_\_\_\_ counterparts .

Witness:

\_\_\_\_\_  
(Proprietorship or Partnership)

Attest: (Corporation)

By: \_\_\_\_\_

Title : \_\_\_\_\_  
(Corp. Sec. or Asst. Sec.. only)

(Corporate Seal)

\_\_\_\_\_  
Contractor: (Trade or Corporate Name I

By: \_\_\_\_\_

**Title:** \_\_\_\_\_  
(Owner, Partner, or Corp.  
Pres. or Vice Pres. only)

\_\_\_\_\_  
(Surety Company)

Witness:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(Attorney in Fact)

Countersigned :

\_\_\_\_\_

(Surety Corporate Seal)

\_\_\_\_\_  
(N.C. Licensed Resident Agent)

\_\_\_\_\_

\_\_\_\_\_  
Name and Address-Surety Agency

\_\_\_\_\_

\_\_\_\_\_  
Surety Company Name and N.C.  
Regional or Branch Office Address